IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 20811 of 2006(C)

OS.168/2005 of SUB COURT, OTTAPPALAM
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PETITIONER:

SHARFUDEEN, S/O. KUNNIRIKKATTIL
ABDUL KHADER, CHERUKODE AMSOM,
VANDUMTHARA DESOM, OTTAPALAM TALUK.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:
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1. ABDUL RAHIMAN, S/O. KOROKKOTTIL
MOHAMMED, CHERUKODE AMSOM DESOM,
OTTAPALAM TALUK.

2. UNNIAN, S/O. KOROKKOTTIL MOHAMMED,
CHERUKODE AMSOM DESOM, OTTAPALAM TALUK.

3. ALI, S/O. KOROKKOTTIL MOHAMMED,
CHERUKODE AMSOM DESOM, OTTAPALAM TALUK.

4. ASIYA, D/O. KOROKKOTTIL MOHAMMED,
CHERUKODE AMSOM DESOM, OTTAPALAM TALUK.

5. MUHAMMED, S/O. KOROKKOTTIL MOHAMMED,
CHERUKODE AMSOM DESOM, OTTAPALAM TALUK,
NABEESA, D/O. KOROKKOTTIL MOHAMMED,
KULUKKALLUR AMSOM, OTTAPALAM TALUK.

6. NABEESA, D/O. KOROKKOTTIL MOHAMMED,
KULUKKALLUR AMSOM, OTTAPALAM TALUK.

7. KADEEJA UMMA, S/O. KOROKKOTTIL MOHAMMED
CHERUKODE AMSOM DESOM, KOTTAPALAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE AGREEMENT DTD. 01.09.05 EXECUTED BETWEEN THE PETITIONER AND THE RESPONDENTS.

EXT.P2: COPY OF THE AFFIDAVIT IN SUPPORT OF I.A.538/06 DTD. 08.03.06 IN O.S.168/05, SUB COURT, OTTAPPALAM.

EXT.P3: COPY OF THE COUNTER BY THE PLAINTIFF IN I.A.538/06 DTD. 12.06.2006 IN O.S.168/05, SUB COURT, OTTAPALAM.

EXT.P4: COPY OF THE ORDER OF THE SUBORDINATE JUDGE OF OTTAPALAM IN I.A.538/06 IN O.A.168/05, SUB COURT, OTTAPALAM.

RESPONDENT'S EXHIBITS: NIL.

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// TRUE COPY//

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 20811 of 2006

Dated this the 27th day of July , 2007

JUDGMENT

This writ petition remains defective on the reason that the notice, which was issued for respondents 3, 4 and 5 and others have not been returned. As regards notice sent to respondents 3, 4 and 5 postal acknowledgment cards have been received back without the signature of these respondents. According to me, it can be deemed that respondent Nos. 3, 4 and 5 have been actually served with notice. Moreover the other defendants who are co – defendants along with respondents 3, 4 and 5 and do not have any conflicting interest in the matter with the respondents 3, 4 and 5, have been actually served with notice.

2. Ext.P4 is the impugned order under which the learned Subordinate Judge has allowed application filed by the respondents/ defendants to call upon the petitioner to deposit the balance sale consideration before the court. One of the principal

issues which was formulated for trial in the suit was whether the plaintiff's claim that he is ready and willing to perform his part of the obligation under the agreement for sale is correct. The respondent contended that the plaintiff was not ready and willing since he was short of funds. But the petitioner, on the contrary, contended that there was no such problem at all and that he is prepared to deposit the money but only after the dispute regarding the pathway situated in the property is settled. In a suit for specific performance of a contract for sale the averment that the plaintiff is ready and willing to perform his part of the obligations is crucial and when that averment was disputed, the petitioner could have substantiated his stand that he is ready and willing to perform his part of the obligations best by depositing the balance sale consideration if and when directed inthat regard by the court.

3. I do not find any infirmity about Ext.P4 warranting correction under this courts' jurisdiction under Article 227 of the Constitution. However, even as I confirm Ext.P4, I modify Ext.P4 by directing the petitioner to deposit the balance sale consideration in a Nationalized bank having branch at

Ottappalam as a short term Fixed Deposit and produce that receipt with lien duly noted towards the claim in O.S. No.168/2005 within three weeks of the petitioner receiving a copy of this judgment.

PIUS C. KURIAKOSE,
JUDGE.

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